

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

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UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CR 99-439 BB

GREGORY BERNARD LACY,

Defendant.

MEMORANDUM OPINION  
AND  
ORDER DENYING RESENTENCING

THIS MATTER is before the Court on Defendant's Motion to Reduce Sentence Pursuant to 18 U.S.C. § 3582(c)(2) [Docs. 131, 139], and the Court having considered the briefs of all parties, finds it has no legal authority to resentence the Defendant.

Discussion

Defendant was convicted by jury of possession with the intent to distribute more than 50 grams of cocaine. This Court scheduled sentencing and requested a presentence report. The probation officer calculated the total offense level. (The base offense level for the drugs was 32, but was increased by the two levels the Court added for obstruction of justice.) Defendant's criminal history category was calculated to be III; however, pursuant to 21 U.S.C. § 851, a statutory minimum of 240 months was required. As a result of the enhancement, the guideline sentence was 240 months pursuant to section 5G1.1(b).

Defendant filed a motion for reduction of sentence, pursuant to 18 U.S.C. § 3582(c)(2), based on the recent amendment to the Sentencing Guidelines which lowered the base offense levels applicable to cocaine base (“crack”) offenses. However, the amendment does not apply because of the 21 U.S.C. § 851 enhancement. *United States v. Luckey*, 2008 WL 3929587 (7th Cir.); *United States v. Spearman*, 2008 WL 3266868 (9th Cir.). The amendment to 18 U.S.C. § 3582 does not permit a reduction below the statutory minimum. *United States v. Mueller*, 27 F.2d 494 (10th Cir. 1994).

This Defendant claims that his criminal history is now lower than what it was when he was sentenced because detainers pending against him were dropped after he received his federal sentence. However, none of the convictions underlying the detainers was vacated or pardoned. The statutory enhancement provision still applies and that requires the 240-month sentence.

**ORDER**

Defendant’s Motion for a reduced sentence is DENIED.

SO ORDERED this 16<sup>th</sup> day of September, 2008.

A handwritten signature in black ink, appearing to read "Bruce D. Black", is written over a horizontal line.

**BRUCE D. BLACK**  
United States District Judge